

Environmental Protection Agency

§ 85.1713

memorandum of exemption will be prepared and submitted to the person requesting the exemption. The memorandum will set forth the basis for the exemption, its scope, and such terms and conditions as are deemed necessary. Such terms and conditions will generally, include, but are not limited to, agreements by the applicant to conduct the exempt activity in the manner described to EPA, create and maintain adequate records accessible to EPA at reasonable times, employ labels for the exempt engines or vehicles setting forth the nature of the exemption, take appropriate measures to assure that the terms of the exemption are met, and advise EPA of the termination of the activity and the ultimate disposition of the vehicles or engines.

(b) Any exemption granted pursuant to paragraph (a) of this section shall be deemed to cover any subject vehicle or engine only to the extent that the specified terms and conditions are complied with. A breach of any term or condition shall cause the exemption to be void ab initio with respect to any vehicle or engine. Consequently, the causing or the performing of an act prohibited under sections 203(a) (1) or (3) of the Clean Air Act other than in strict conformity with all terms and conditions of this exemption shall render the person to whom the exemption is granted, and any other person to whom the provisions of section 203 are applicable, liable to suit under sections 204 and 205 of the Act.

[39 FR 32611, Sept. 10, 1974, as amended at 45 FR 13733, Mar. 3, 1980. Redesignated and amended at 47 FR 30485, July 14, 1982]

§ 85.1711 Submission of exemption requests.

Requests for exemption or further information concerning exemptions and/or the exemption request review procedure should be addressed to:

Director
Manufacturers Operations Division (EN-340)
Environmental Protection Agency
1200 Pennsylvania Ave., NW.,
Washington, DC 20460

[39 FR 32611, Sept. 10, 1974, as amended at 44 FR 61962, Oct. 29, 1979. Redesignated and amended at 47 FR 30485, July 14, 1982]

§ 85.1712 Treatment of confidential information.

(a) Any person or manufacturer may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR part 2, subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this subpart is confidential, a person or manufacturer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in part 2, subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with 40 CFR 2.204(c)(2)(i)(A).

[50 FR 34797, Aug. 27, 1985]

§ 85.1713 Delegated-assembly exemption.

The provisions of this section apply for manufacturers of heavy-duty highway engines.

(a) Shipping an engine separately from an aftertreatment component that you have specified as part of its certified configuration will not be a violation of the prohibitions in Clean Air Act section 203 (42 U.S.C. 7522), if you follow the provisions of paragraph (b) or (c) of this section.

(b) If you include the cost of all aftertreatment components in the cost of the engine and ship the aftertreatment components directly to the vehicle manufacturer, or arrange for separate shipment by the component manufacturer to the vehicle manufacturer, you must meet all the following conditions:

(1) Apply for and receive a certificate of conformity for the engine and its emission-control system before shipment.

(2) Provide installation instructions in enough detail to ensure that the engine will be in its certified configuration if someone follows these instructions.

(3) Have a contractual agreement with a vehicle manufacturer obligating the vehicle manufacturer to complete the final assembly of the engine so it is in its certified configuration when installed in the vehicle. This agreement must also obligate the vehicle manufacturer to provide the affidavits required under paragraph (b)(4) of this section.

(4) Take appropriate additional steps to ensure that all engines will be in their certified configuration when installed by the vehicle manufacturer. At a minimum, you must obtain annual affidavits from every vehicle manufacturer to whom you sell engines under this section. Include engines that you sell through distributors or dealers. The affidavits must list the part numbers of the aftertreatment devices that vehicle manufacturers install on each engine they purchase from you under this section.

(5) Describe in your application for certification how you plan to use the provisions of this section and any steps you plan to take under paragraph (b)(3) of this section.

(6) Keep records to document how many engines you produce under this exemption. Also, keep records to document your contractual agreements under paragraph (b)(3) of this section. Keep all these records for five years after the end of the model year and make them available to us upon request.

(7) Make sure the engine has the emission control information label we

require under the standard-setting part.

(c) If you do not include the cost of all aftertreatment components in the cost of the engine, you must meet all the conditions described in paragraphs (b)(1) through (7) of this section, with the following additional provisions:

(1) The contractual agreement described in paragraph (b)(3) of this section must include a commitment that the vehicle manufacturer will do the following things:

(i) Separately purchase the aftertreatment components you have specified in your application for certification.

(ii) Perform audits as described in paragraph (c)(3) of this section.

(2) Before you ship an engine under the provisions of this paragraph (c), you must have written confirmation that the vehicle manufacturer has ordered the appropriate aftertreatment components.

(3) You must audit vehicle manufacturers as follows:

(i) If you sell engines to 16 or more vehicle manufacturers under the provisions of this section, you must annually audit four vehicle manufacturers to whom you sell engines under this section. To select individual vehicle manufacturers, divide all the affected vehicle manufacturers into quartiles based on the number of engines they buy from you; select a single vehicle manufacturer from each quartile each model year. Vary the vehicle manufacturers you audit from year to year, though you may repeat an audit in a later model year if you find or suspect that a particular vehicle manufacturer is not properly installing aftertreatment devices.

(ii) If you sell engines to fewer than 16 vehicle manufacturers under the provisions of this section, set up a plan to audit each vehicle manufacturer on average once every four model years.

(iii) Starting with the 2014 model year, if you sell engines to fewer than 40 vehicle manufacturers under the provisions of this section, you may ask us to approve a reduced auditing rate. We may approve an alternate plan that involves auditing each vehicle manufacturer on average once every ten model years, as long as you show that

you have met the auditing requirements in preceding years without finding noncompliance or improper procedures.

(iv) Audits must involve the assembling companies' facilities, procedures, and production records to monitor their compliance with your instructions, must include investigation of some assembled engines, and must confirm that the number of aftertreatment devices shipped were sufficient for the number of engines produced. Where a vehicle manufacturer is not located in the United States, you may conduct the audit at a distribution or port facility in the United States.

(v) If you produce engines and use them to produce vehicles under the provisions of this section, you must take steps to ensure that your facilities, procedures, and production records are set up to ensure compliance with the provisions of this section, but you may meet your auditing responsibilities under this paragraph (c)(3) of this section by maintaining a database showing how you pair aftertreatment components with the appropriate engines.

(vi) You must keep records of these audits for five years after the end of the model year and provide a report to us describing any uninstalled or improperly installed aftertreatment components. Send us these reports within 90 days of the audit, except as specified in paragraph (f) of this section.

(4) In your application for certification, give a detailed plan for auditing vehicle manufacturers, as described in paragraph (c)(3) of this section.

(d) An engine you produce under this section becomes new when it is fully assembled, except for aftertreatment devices, for the first time. Use this date to determine the engine's model year.

(e) Once the vehicle manufacturer takes possession of an engine exempted under this section, the exemption expires and the engine is subject to all the prohibitions in Clean Air Act section 203 (42 U.S.C. 7522).

(f) You must notify us within 15 days if you find from an audit or another source that a vehicle manufacturer has failed to meet its obligations under this section.

(g) We may suspend, revoke, or void an exemption under this section, as follows:

(1) We may suspend or revoke your exemption for the entire engine family if we determine that any of the engines are not in their certified configuration after installation in the vehicle, or if you fail to comply with the requirements of this section. If we suspend or revoke the exemption for any of your engine families under this paragraph (g), this exemption will not apply for future certificates unless you demonstrate that the factors causing the nonconformity do not apply to the other engine families. We may suspend or revoke the exemption for shipments to a single facility where final assembly occurs.

(2) We may void your exemption for the entire engine family if you intentionally submit false or incomplete information or fail to keep and provide to EPA the records required by this section.

(h) You are liable for the in-use compliance of any engine that is exempt under this section.

(i) It is a violation of the Act for any person to complete assembly of the exempted engine without complying fully with the installation instructions.

(j) [Reserved]

(k) You may ask us to provide a temporary exemption to allow you to complete production of your engines at different facilities, as long as you maintain control of the engines until they are in their certified configuration. We may require you to take specific steps to ensure that such engines are in their certified configuration before reaching the ultimate purchaser. You may request an exemption under this paragraph (k) in your application for certification, or in a separate submission.

[70 FR 40430, July 13, 2005]

Subpart S—Recall Regulations

AUTHORITY: Sec. 301(a), Clean Air Act, 81 Stat. 504, as amended by sec. 15(c), 84 Stat. 1713 (42 U.S.C. 1857g(a)). The regulations implement sec. 207(c) (1)–(2), Clean Air Act, 84 Stat. 1697 (42 U.S.C. 1847f–5a(c)(1)–(2)); sec. 208(a), Clean Air Act, 81 Stat. 501, as renumbered by sec. 8(a), 84 Stat. 1694 (42 U.S.C. 1857f–6(a)).